

### **REMARKS**

This is a full and timely response to the outstanding non-final Office Action mailed April 21, 2004 (Paper No. 12). Upon entry of this response, claims 1-3, and 5-13, and 16-20 are pending in the application. In this response, claims 1, 3, 5, 7-10, 11-13, and 16-20 have been amended and claims 14-15 have been cancelled. Applicants respectfully request that the amendments being filed herewith be entered and that there be reconsideration of all pending claims.

1. Status of Claim 17

Neither the Office Action Summary nor the statement of rejection (Office Action, paragraph 2, p. 2) explicitly rejects claim 17. However, claim 17 has not been indicated as allowable, and it is discussed in the body of the Office Action (p. 4). Therefore, Applicants assume that claim 17 has also been rejected under §103(a) as allegedly unpatentable over *Schulman* in view of *Ennis Jr. et al.*

2. Rejection of Claims 1-3 and 5-20 under 35 U.S.C. §103

Claims 1-3 and 5-20 have been rejected under §103(a) as allegedly obvious over *Schulman* (U.S. 5,600,632) in view of *Ennis Jr. et al.* (U.S. 5,867,483). Applicants respectfully traverse these rejections. It is well established at law that, for a proper rejection of a claim under 35 U.S.C. §103 as being obvious based upon a combination of references, the cited combination of references must disclose, teach, or suggest, either implicitly, all elements/features/steps of the claim at issue. *See, e.g., In re Dow Chemical*, 5 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1988); *In re Keller*, 208 U.S.P.Q.2d 871, 881 (C.C.P.A. 1981).

a. Claims 1, 5, 8, and 11

Applicants respectfully submit that claims 1, 5, 8, and 11, are allowable for at least the reason that the proposed combination of *Schulman* in view of *Ennis Jr. et al.* does not disclose, teach, or suggest at least the feature of a “display means for displaying said bit burst analysis information, network latency information, data delivery success information and frame size distribution information associated with a virtual circuit between the first and the second communication device” as recited in amended claim 1. Similarly, the proposed combination does not disclose, teach or suggest “a bit burst analysis view, a network latency view, a data delivery success view and a frame size distribution view, wherein said views are associated with a virtual circuit between the first and the second communication device” as recited in amended claim 5. Finally, the proposed combination does not disclose, teach or suggest “displaying view of said bit burst analysis information, said network latency information, said data delivery success information and said frame size distribution information” as recited in amended claims 11 and 18.

*Schulman* does not disclose, teach, or suggest using at least a “display means for displaying said bit burst analysis information, network latency information, data delivery success information and frame size distribution information associated with a virtual circuit between the first and the second communication device.” *Schulman* discloses a network performance analysis system which includes multiple synchronized network analyzers. The system aggregates data from the various network analyzers, then processes the data. The data is then extracted for use by a network simulator. Examples of data extracted include: packet latency distribution, packet size distribution, packet loss, and packet retransmission. (Abstract; Col. 7, lines 40-60).

The various system components are shown in FIGs. 1-7, but these figures do not include any means for displaying the performance data. Applicants respectfully submit that FIGs. 8-12 do not disclose the display means recited in claims 1, 5, 8, and 11, but merely show examples of “the kind of data which can be extracted from the sorted network analyzer data” (Col. 8, lines 1-5). A careful reading of the reference as a whole shows that *Schulman* does not teach that these graphical representations are produced by the system.

Even assuming, *arguendo*, that FIGs. 8-12 disclose display means, *Schulman* would then disclose, at most, a display of inter-arrival times, a display of packet paths, a display of packet latency, and a display of network topology. In contrast, amended claims 1, 5, 8, and 11 recite a “display means for displaying said bit burst analysis information, network latency information, data delivery success information and frame size distribution information associated with a virtual circuit between the first and the second communication device.”

Finally, the Office Action asserts that the above recited limitations are taught in *Schulman* by the statement “[a]nother advantage of the invention is the provision of a graphical display of complex multivariate relationship” (in *Schulman*, Col. 4, lines 20-21). Applicants respectfully assert that this general statement is *not* equivalent to the specific limitations recited in claims 1, 5, 8, and 11.

*Ennis Jr. et al.* also fails to teach, suggest or disclose at least a “display means for displaying said bit burst analysis information, network latency information, data delivery success information and frame size distribution information associated with a virtual circuit between the first and the second communication device.” *Ennis Jr. et al.* teaches, at most, a display with multiple views of channel utilization. Channel utilization is illustrated with a pie chart in two of the views, and with a bar chart in the other two views. Two of the views show traffic from the

network, and two of the views show traffic to the network. *Ennis Jr. et al.* does not teach a display of network latency, data delivery success, or frame size distribution. Thus, *Ennis Jr. et al.* fails to disclose, teach, or suggest every element of Applicants' claimed invention.

Accordingly, the proposed combination of *Schulman* in view of *Ennis Jr. et al.* does not teach at least the claimed limitations of a "display means for displaying said bit burst analysis information, network latency information, data delivery success information and frame size distribution information associated with a virtual circuit between the first and the second communication device" as recited in amended claims 1, 5, 8, and 11. Since the proposed combination does not teach at least the above-described features recited in claims 1, 5, 8, and 11, a *prima facie* case establishing an obviousness rejection has not been made. Thus, amended claims 1, 5, 8, and 11 are not obvious under the proposed combination of *Schulman* in view of *Ennis Jr. et al.*, and the rejection should be withdrawn.

b. Claims 14 and 15

Claims 14 and 15 are cancelled without prejudice, waiver, or disclaimer, and therefore, the rejection of these claims is rendered moot. Applicants take this action merely to reduce the number of disputed issues and to facilitate early allowance and issuance of other claims in the present application. Applicants reserve the right to pursue the subject matter of these cancelled claims in a continuing application, if Applicants so choose, and do not intend to dedicate any of the cancelled subject matter to the public.

c. Claims 2-3, 6-7, 9-10, 12-13, and 16-20

Since claims 1, 5, 8, and 11 are allowable, Applicants respectfully submit that claims 2-3, 6-7, 9-10, 12-13, and 16-20 are allowable for at least the reason that each depends from an allowable claim. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q. 2d 1596, 1598 (Fed. Cir. 1988).

Therefore, Applicants respectfully request that the rejection of claims 2-3, 6-7, 9-10, 12-13, and 16-20 be withdrawn.

**CONCLUSION**

Applicants respectfully request that all outstanding objections and rejections be withdrawn and that this application and presently pending claims 1-3, and 5-13, and 16-20 be allowed to issue. If the Examiner has any questions or comments regarding Applicant's response, the Examiner is encouraged to telephone Applicant's undersigned counsel.

Respectfully submitted,

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